

In the Drawings:

The attached sheets of drawings, FIGS. 28-40, have been changed to add the legend "Prior Art."

Attachment: Replacement sheets

REMARKS

Claims 1 and 3-9 are pending upon entry of this amendment. Claims 1 and 3-9 have been amended to avoid the application of 35 USC 112, sixth paragraph, and to overcome the indefiniteness rejections. Claim 1 has also been amended to incorporate the features of claim 2. Claims 2 and 10-22 have been cancelled. No new matter has been presented.

Figs. 28-40 of the drawings are objected to for lacking the legend "Prior Art." Replacement drawings for these figures are submitted accordingly. Withdrawal of this objection is respectfully requested.

Claim 2 is rejected under 35 USC 112, first paragraph, as failing to comply with the enablement requirement. Claim 2 has been cancelled and its features have been incorporated into claim 1. This rejection is respectfully traversed with respect to amended claim 1.

Amended claim 1 is fully supported and enabled by the specification, e.g., page 25, line 17 to page 26, line 19; page 68, line 7 to page 69, line 6; and page 101, lines 10-25 of the specification. (Please note that page 68, line 7 to page 69, line 6 of the specification is amended to correct a typographical error in line with the other cited portions of the specification.) In particular, the specification explains that in circumstances in which the axial vicinity portion 38 is formed in a region including the mobilization regional portion, the axial vicinity portion 38 "has a size in a radial direction set to the extent that the reflected light from the second recording layer 21b does not enter the first and second TES splitting units 35 and 36 even when the objective lens 27 is driven to be displaced in the radial direction R." See Specification, page 69, lines 1-6. This description denotes the characteristics of the region within which the axial vicinity portion 38 is formed, which is the mobilization regional portion. The specification is therefore sufficiently enabling a person of ordinary skill in the art to make and use the claimed invention.

Claims 2 and 3 are rejected under 35 USC 112, second paragraph, as being indefinite. Claim 2 has been cancelled and its features have been incorporated into claim 1. Amended claim 1 overcomes this rejection. Withdrawal of this rejection is respectfully requested.

Claims 1-3, 5, 8-10 are rejected under 35 USC 102(e) as being anticipated by Nakayama, U.S. Patent No. 7,359,292. Claim 4 is rejected under 35 USC 103(a) as being unpatentable over Nakayama in view of Baba, U.S. Patent No. 6,760,296. Claim 6 and 7 are rejected under 35 USC 103(a) as being unpatentable over Nakayama in view of Ohnishi, U.S. Patent Pub. No. 2002/0141301. Claims 6 and 7 are also rejected under 35 USC 103(a) as being unpatentable over Nakayama in view of Baba and Ohnishi.


A certified translation of the priority document (Japanese Patent Application No. 2003-92110) has been submitted with this filing to perfect the claim of priority of this application. The effective filing date of the application predates the filing date of Nakayama. Thus, Nakayama is not prior art and cannot be relied upon as basis for an anticipation rejection under 35 USC 102(e) or an obviousness rejection under 35 USC 103(a). Accordingly, claims 1 and 2-9 are allowable.

In view of the above, this application is in condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. **275412003500**.

Dated: June 22, 2009

Respectfully submitted,

By 
Amir Rohani

Registration No.: 61,782
MORRISON & FOERSTER LLP
1650 Tysons Blvd, Suite 400
McLean, Virginia 22102
(703) 760-7757

Attachments